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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3363 OF 2007

Mohammed Salim Shaikh .. Petitioner

versus

State of Maharashtra .. Respondent

...

Mrs.Malika Ingale i/b Gargi R. Bhatkar for the petitioner.

Mr.K.V. Saste APP for the State.

CORAM : D.G.KARNIK, J

DATED : 14th December 2007

P.C.:

1. Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner seeks bail under section 439 of the Code of Criminal Procedure in connection with crime registered under C.R. no.30 of 2007 with N.M. Joshi Marg police station.

3. The case of the prosecution in short is that

petitioner was an undertrial petitioner lodged in Mumbai Central Jail. There he along with three other cell mates assaulted Ali Azgar (hereinafter referred to as 'the deceased') at about 7.15 a.m. The petitioner used a screw driver for the purpose of assault and inflicted several injuries on the deceased. The deceased was admitted to the J.J. Hospital where he succumbed to the injuries but after his statement was recorded. In his statement he has specifically named the petitioner and other three cell mates of the persons who assaulted him. There is also an eye witness who has also stated that the petitioner assaulted the deceased.

4. Learned counsel for the petitioner submitted that petitioner has been falsely implicated in the crime. Counsel submitted that the FIR and the statement of the deceased have been ante dated and the petitioner has been falsely implicated to shield the real culprits. She further submitted that eye witness has not narrated the manner of assault and therefore that raise a doubt whether he was really an eye witness.

5. The deceased died on 28th January 2007 i.e. on the date of assault itself. The statement is signed by him. Therefore, in my view, the contention

of the petitioner that the FIR and the statement have been ante dated does not prima facie appear to be true; because the signature of the deceased could not have been obtained after his death on 28th January 2007.

6. Whether the eye witness should or should not be believed is a matter to be considered at the trial. At this stage, there is on record the statement of the deceased which implicates the petitioner; an eye witness also implicates the petitioner. In the circumstances, it cannot be said that the police have falsely implicated the petitioner to shield real culprits as contended by the learned counsel.

7. The offence is of a serious nature punishable with death and/or with Imprisonment for life. The offence is alleged to have been committed while the petitioner was in jail in connection with other offences which increases the gravity of the offence. In my view, the petitioner is not entitled to a bail. Accordingly, application for bail is rejected.

(D.G. KARNIK, J)